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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,452	04/12/2001	Randall Allen Vogel	AD6728 US NA	3330

23906 7590 06/15/2005

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EXAMINER

JACKSON, MONIQUE R

ART UNIT PAPER NUMBER

1773

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833,452

Applicant(s)

VOGEL ET AL.

Examiner

Monique R Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,9,11,12,14,16-18,20,21,43,45,47,49 and 54-84 is/are pending in the application.
- 4a) Of the above claim(s) 4,7,9,11,12,14,16-18,20,21,45,47,49,81 and 82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,43,54-80,83 and 84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The amendment filed 3/28/05 has been entered. Claims 22-42 and 51 have been canceled. New claims 54-84 have been added. Claims 1, 3, 4, 6, 7, 9, 11, 12, 14, 16-18, 20-21, 43, 45, 47, 49 and 54-84 are pending in the application. Claims 4, 7, 9, 11, 12, 14, 16-18, 20-21, 45, 47, 49 and new claims 81-82 are withdrawn from consideration as being directed to non-elected species.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

3. The amendment filed 3/28/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "The ionomer in the blend is present in an amount of about 30wt%" as added to paragraph 0178.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 3, 6, 43, 54-80 and 83-84 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled

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in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites the new limitation "the ionomer is present in said ionomer-polyethylene blend in an amount of about 30wt%" however the original disclosure at the time of filing does not teach or fairly suggest that the ionomer is present in said blend in this amount. In fact, the original disclosure at the time of filing is silent with regards to the amount of the ionomer in the ionomer-polyethylene blend and hence this new limitation was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

6. Claims 66-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 66-68 recite the limitation "the flow properties" in line 1. There is insufficient antecedent basis for this limitation in the claim.

7. Claims 69-72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 69-72 recite the limitation "the top layer" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. Claims 1, 3, 6, and 43 and new Claims 54-68, 73-80 and 83-84 are rejected under 35 U.S.C. 102(b) as being anticipated by Fanselow et al (USPN 5,766,744) for the reasons recited previously and restated below. The Examiner notes that the elected species of the instantly claimed second coextruded layer is ionomer but does not exclude the incorporation of other polymeric materials including ethylene polymers.

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Fanselow et al teach a coextruded multilayered film comprising a core layer of soft thermoplastic polymer such as ethylene copolymers including blends with ionomers, sandwiched between outer and inside surface layers wherein in preferred embodiments the inside surface layer is an ionomeric copolymer with a copolymer of ethylene and methacrylic acid-metal cation salt being particularly suitable, and wherein in particularly preferred embodiments the core layer is composed of ethylene-vinyl acetate, ethylene-butene copolymer, ethylene methacrylate copolymer, ionomer and combinations thereof (Abstract; Col. 4, lines 23-50; Col. 5, lines 1-3; Col. 11, lines 7-15.) Fanselow et al teach that the film may be clear, opaque or colored and that any one or all of the layers may be provided with pigments or dyes as desired (Col. 6, lines 34-37 and Col. 13, lines 12-15.) Fanselow et al specifically teach an example comprising a trilayer coextruded film comprising a surface layer consisting essentially of a SURLYN ionomeric resin coextruded with a core layer comprising a SURYLN resin blend and an outer surface layer of ethylene methacrylate resin (Example 18.) Fanselow et al teach that the film may be laminated to itself or a second like film to produce a film based assembly that may then be bonded to connective or other performing parts (Col. 13, line 60-Col. 14, line 23.) Fanselow et al further teach that the coextruded film and layers have thickness ranges that read upon the instantly claimed ranges and considering the multilayer films are produced by coextrusion to form a unitary film, the Examiner takes the position that "the flow properties" of the layers are inherently "matched" as instantly claimed (Col. 11, line 60-Col. 12, line 16.)

9. Claims 1, 3, 6, and 43 and new Claims 54-68, 73-80 and 83-84 are rejected under 35 U.S.C. 102(e) as being anticipated by Mientus et al (USPN 6,770,360) for the reasons recited previously and restated below. The Examiner notes that the elected species of the instantly

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claimed second coextruded layer is ionomer but does not exclude the incorporation of other polymeric materials including ethylene polymers.

Mientus et al teach a coextruded, multilayered film comprising a thermoplastic core layer having a first side and a second side, the core layer comprising: a polyolefin having a density in the range of about 0.89 to about 0.97 grams per cubic centimeter; a second polymeric material selected from ionomers derived from sodium, lithium or zinc and an ethylene/methacrylic acid copolymer, and a combination thereof, and a light stabilizer, and is clear or pigmented; an abrasion and scuff resistant clear first thermoplastic skin layer overlying the first side of the core layer, and a clear second thermoplastic skin layer overlying the second side of the core layer, both skins containing light stabilizer, wherein the skin layers are preferably ethylene/methacrylic acid copolymers; ethylene/acrylic acid copolymers; ethylene/methacrylic acid copolymers containing sodium, lithium or zinc (also referred to as ionomers); and mixtures of two or more thereof; and wherein the multilayered film may be laminated to a substrate such as a release liner or adhered to a car, truck, boat or the like (*reads upon the instantly claimed substrates*; Abstract; Col. 3, lines 22-62; Col. 5, lines 22-33; Col. 6, lines 6-46; Col. 7, lines 32-48; Col. 12, lines 19-29; Col. 37, lines 1-5.) Mientus et al teach specific examples comprising SURYLN skin layers sandwiching a core layer comprising a blend with SURLYN resin (Examples.) Mientus et al further teach that the coextruded film and layers have thickness ranges that read upon the instantly claimed ranges and considering the multilayer films are produced by coextrusion to form a unitary film, the Examiner takes the position that “the flow properties” of the layers are inherently “matched” as instantly claimed (Col. 13, lines 1-29.)

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Response to Arguments

10. Applicant's arguments and declaration filed 3/28/05 have been fully considered but they are not persuasive. The Applicant first states that the amendment to the specification and claims is supported by the information provided in Exhibit A which is allegedly the composition of the ionomer/polyethylene blend resin utilized in the inventive examples, namely BEXLOY® W720. First the Examiner notes that the exhibit recites a composition labeled as AXW720 NC010 which the Applicant alleges is the same as the BEXLOY®W720 utilized in the inventive examples. However, it is noted that the title of the document is "PRODUCTION OF BEXLOY® W710 and W720 RESINS" and includes three different compositions, not just two corresponding to W710 and W720, and hence it appears from the document that these resins may have varying compositions, specifically since the leading paragraph discusses how the resins were tailored based on a customer's particular request. Further, the Examiner notes that the document has a date of July 11, 1997, almost three years prior to the filing date of the instant invention and considering the composition of trademarked products may change over time, the document does not provide sufficient support that the Applicant had position of the instantly claimed invention, namely comprising an ionomer/polyethylene blend with about 30wt% ionomer. Aside from the new matter issue, the Examiner notes that the Applicant did not elect the species of ionomer/polyethylene blend and hence the amendment to the claims is moot. As recited above, the prior art references read upon the elected species wherein the second coextruded ionomer layer does not exclude the incorporation of other polymeric materials.

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11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Monique R. Jackson
Primary Examiner
Technology Center 1700
June 10, 2005